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OPA-PA-20-004 - Appellant's Hearing Brief

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Good morning:

Attached is Appellant's Hearing Brief in this matter. Please confirm receipt. Should you have any trouble with the file, I can resend.

Thank you for your time,
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9
10 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

11 In the Appeal of
12 JRN AIR CONDITIONING &
13 REFRIGERATION, INC.,
14 Appellant.

Docket No. OPA-PA-20-004

APPELLANT'S HEARING BRIEF

Hearing: September 14, 2020 at 10:00 AM
Before: Public Auditor of Guam Benjamin J.F. Cruz (via Zoom)

15
16 COMES NOW Appellant JRN Air Conditioning & Refrigeration, Inc. and submits its
17 Hearing Brief in anticipation of the hearing in this matter set for September 14, 2020. For ease and
18 to avoid repetitiveness, this Hearing Brief hereby restates and incorporates by reference the
19 following preceding items:

- 20 1. Appellant's Statement initiating this appeal, filed on June 2, 2020, particularly the factual
- 21 pleadings and arguments therein;
- 22 2. Appellant's Comments to Agency Report, filed on July 27, 2020;
- 23 3. Appellant's Statement of Issues, filed on September 1, 2020; and
- 24 4. Appellant's Exhibit List and Exhibits 1 through 17, also filed on September 1, 2020.

25
26 **Disputed Facts and Summary of Arguments Pertaining to Them**

27 Appellant, having reviewed Purchasing Agency Guam Memorial Hospital Authority's

1 Admissions of Fact (filed on September 1, 2020), accept each enumerated item as admitted and true
2 except for Paragraphs 8, 12, 13, 14, and 15. Appellant will discuss each in turn.

3
4 8. *JRN's bid did not include a Statement of Qualifications and Performance Data relevant to*
5 *the IFB's scope of work: the removal and replacement of one (1) boiler unit and piping system.*

6 Appellant takes issue with this "fact" as pleaded by GMHA in that it prematurely makes a legal
7 conclusion as to whether the content of Appellant's bid was *relevant* to the IFB's scope of work.

8 Though this may state GMHA's position regarding this disputed fact, whether Appellant's bid
9 presented information relevant to the scope of work remains an issue to be determined at the
10 hearing.

11 Rather, Appellant's bid presented the various documents in **Exhibit 6**, which include a
12 resume of Appellant's employee Teddy Glen Roman Garcia. Mr. Garcia's stated qualifications in
13 "Installation, Testing and Commissioning of Heating . . . [and] Plumbing Works" and his stated
14 experience in managing water systems, designing and installing plumbing and drainage works, and
15 in managing sanitary installation works, among other things, are relevant to understanding and
16 installing boiler systems. Boiler units and their piping systems necessarily include heating, water,
17 plumbing, and drainage features. Mr. Garcia, also being a licensed mechanical engineer in the
18 Philippines, categorically means that he possesses the general knowledge relevant to the scope of
19 work.

20 **Exhibit 6** also includes literature from the manufacturer of the boiler system chosen by
21 Appellant, Cleaver Brooks. This literature unequivocally guarantees "responsibility backed up by
22 [a] service distribution network that provides 24/7 service and parts all around the world."

23 Appellant's election of Cleaver Brooks as its manufacturer-partner in its bid is highly relevant to
24 Appellant's ability to deliver.

25 In its Agency Report, GMHA admittedly states that it has no set criteria regarding bidder
26 qualification and that it cannot instruct bidders as to what kind of showing can be made to establish a
27 bidder's qualification. GMHA does not even take a position as to whether it views qualification as

1 established by resumes, certifications, project lists, affidavits, or by pure narrative. As such, the
2 entire contents of a bid must be taken into account in the determination of whether the bidder is
3 qualified and/or responsible. Here, the combination of Mr. Garcia's resume and the relationship
4 between Appellant and Cleaver Brooks was sufficient to establish that Appellant was qualified for
5 the IFB's scope of work. Otherwise, Appellant would not have prepared and confidently submitted
6 its bid in the first place.

7
8 *12. In its December 5, 2019 letter, GMHA wrote to JRN: "We are unable to locate any*
9 *statements, experience or projects related to boiler installation."* Appellant's arguments above also
10 apply here. In short, it is Appellant's position that the information presented throughout its bid
11 demonstrates capabilities relating to boilers. Appellant believes that GMHA either failed or refused
12 to allot any value to such information or at least make the critical connection between such
13 information and the scope of work.

14
15 *13. JRN submitted two responsive letters to the GMHA dated December 10, 2019 and*
16 *received on December 11, 2019, containing information about JRN's boiler equipment supplier and*
17 *its mechanical engineer.* Despite having submitted sufficient information regarding its qualification,
18 Appellant nevertheless submitted additional information to GMHA, which can be found in **Exhibit**
19 **7**. The first of these responsive letters included more specific information regarding Appellant's
20 partnership with Cleaver Brooks, particularly Cleaver Brooks's direct involvement in the
21 installation, start-up, commissioning, and testing of the boiler.

22 The second of these responsive letters then spoke to Appellant's partnership with a Guam-
23 licensed mechanical engineer, Mauro R. Narvarte, in the complete supervision of the project.
24 Appellant's additional submissions included a signed and notarized certification by Mr. Narvarte
25 explicitly stating "installation and removal works" involving "specialty systems such as steam or hot
26 water boilers (fire tube and water tube types)[,] including all pipeworks and safety accessories." In
27 the same document, Mr. Narvarte certified that all of Appellant's employees would be supervised by

1 him in the “replacement of boilers and related systems . . .”

2 Again, it appears that GMHA either failed or refused to allot any value to such information
3 or at least make the critical connection between such information and the scope of work.
4

5 14. In its January 24, 2020 letter, GMHA wrote to JRN, “your letter states that a
6 *Mechanical Engineer employed at JRN has experience in installation of boilers and that such*
7 *experience can be found in his resume. However, the GMHA is unable to identify any such*
8 *statements, experience, or projects related to boiler installation. Please provide qualification and*
9 *performance data specific to boiler installation.”*

10 15. On January 29, 2020, JRN submitted an “Affidavit of Professional Experience” its
11 *Mechanical Engineer, Mr. Teddy G.R. Garcia, attesting to maintenance and other experience with*
12 *boiler systems in the years 2004 and 2005, that was not previously included in his five-page resume*
13 *submitted as part of its bid.*

14 Appellant addresses these two “facts” concurrently as Paragraph 15 discusses GMHA’s take
15 on Appellant’s response to the letter from GMHA described in Paragraph 14. Appellant seriously
16 questions GMHA’s singular emphasis on Mr. Garcia’s qualification despite the efforts Appellant
17 had gone through to provide assurances by way of information regarding Cleaver Brooks and Mr.
18 Narvarte. Nevertheless, since a person’s general resume may not always include every single detail
19 of the person’s experiences over the course of a 30-year career, Appellant further submitted two
20 signed and notarized affidavits, one by Mr. Garcia and another by one of Appellant’s executive
21 managers, Cesar Cordero, about Mr. Narvarte’s continued engagement. Both can be found in
22 **Exhibit 8.**

23 In the very beginning of Mr. Garcia’s affidavit, he expands on the information in his resume
24 and explicitly attests to possessing “the necessary technical skills and related work experience with
25 regard[] to the *removal, installation, and maintenance* of steam and hot water boilers . . .”
26 (emphasis added). Mr. Garcia goes on to narrate his employment with at least three former
27 employers with whom he particularly worked on large commercial boiler systems.

1 Mr. Cordero's affidavit regarding why Appellant engaged Mr. Narvarte in October 2019 in
2 addition to Mr. Garcia is clear: to consult, plan, and supervise removal and installation work. It
3 goes on to say that Mr. Narvarte will be involved in the project for its entire duration until
4 completion and turnover to GMHA as his contract with Appellant is indefinite for the time being and
5 is renewable.

6 Why GMHA continued to fail or refuse to allot any value to such information or at least
7 make the critical connection between such information and the scope of work is never explained in
8 any of GMHA's communications to Appellant or in any of its submissions in this matter. In fact, to
9 date, GMHA continues to rely on blanket and conclusory statements to the effect of "GMHA was
10 not satisfied." This, together with other suspicions as to GMHA's mishandling of this procurement,
11 which are supported by the procurement record, are the bases of Appellant's complaint.

12

13 **Other Disputes to Be Determined at the Hearing**

14 Again, Appellant restates and incorporates by reference the contents of the items listed at the
15 beginning of this Hearing Brief. In summary, Appellant maintains its contention that while GMHA
16 had no intelligible criteria to determine bidder responsibility other than pure subjectivity, GMHA
17 also evaluated the submitted bids in a manner than unfairly advantaged one bidder over the others.

18 Appellant's contention is supported by the fact that GMHA treated AMmanabat
19 Corporation's subcontractor, who could only demonstrate one project involving a \$1,500 boiler and
20 is not a licensed engineer, as more qualified for the IFB's scope of work than Mr. Garcia, Cleaver
21 Brooks, and Mr. Narvarte combined. It is also supported by the fact that GMHA, after bids were
22 submitted, modified its Special Reminder to Prospective Bidders upon privately consulting with
23 AMmanabat and failed to notify all other bidders of the change (**Exhibit 13**).

24 Relatedly, GMHA made an immediate determination that AMmanabat was qualified and
25 responsible despite neither of the three employee resumes submitted with AMmanabat's bid
26 contained information remotely related to boilers. In fact, it can be argued that AMmanabat
27 specializes not in heating or cooling systems, but in physical construction or renovations, or what

1 AMmanabat’s Project Manager, Emerito L. Ocampo, refers to as “formworks,” “earthworks,” and
2 “land development works” (**Exhibits 17 and 15**).

3

4 Appellant respectfully requests that the Office of Public Accountability make specific
5 findings as to the disputes discussed above and any other findings it may deem necessary and
6 material to the resolution of this appeal.

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8 Submitted September 8, 2020


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10 By

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